

Guidance Note on Setting up a New Charity

1. General

- 1.1 This Guidance Note is intended to provide you with the information you need to set up a new charity. [Guidance Note: Is it necessary or appropriate to set up a new charity?](#) can see [here](#) and we suggest that you read it before you set up a new charity.
- 1.2 This Guidance Note assumes that any charity that you might set up would be in England or Wales (not Scotland or Northern Ireland, where the rules are different).

2. What is a charity?

- 2.1 Although the meaning of a charity overlaps with the everyday non-technical meaning of a charity, it is significantly different from its everyday meaning. It is a specific area of activity that in everyday terms might be considered to be a charity, but it also excludes some of areas of activity that might in everyday terms be thought of as charitable.
- 2.2 An organisation will only be a charity in law and then maintain that status if it meets certain criteria. For more, as to which please consider our [Guidance Note: What is a Charity in Law?](#) which you can see [here](#). That note explains what it is established for "charitable purposes". In essence, it must be for one or more of the 13 "heads" of charity and that the organisation's purposes fall within one of these listed by the Charities Act 2011 and that the organisation is for the public benefit. That note also explains what is meant by "public benefit".

3. Limitations/disadvantages of being a charity

- 3.1 In addition to the requirements for an organisation to be a charity in law (as outlined above), there are the following limitations/disadvantages of being a charity:
- 3.1.1 all of its assets must be used for its charitable purposes;
 - 3.1.2 any profit made must be used for its charitable purposes;
 - 3.1.3 it must have no other purpose;
 - 3.1.4 its charity must not be for the private financial benefits in limited circumstances of any individual;
 - 3.1.5 it must not engage in trading;
 - 3.1.6 its governing document must include a statement of its charitable purposes (using the words "charitable purposes" or "objects"); and
 - 3.1.7 the charity must not be established for the private inurement of any individual and its assets are only applied in the interests of the public and for the public benefit.
- If you do not wish to be subject to these limitations/disadvantages, you will not be able to set up a new charity to which these limitations/disadvantages apply.

4. Advantages of charitable status

- 4.1 The following benefits of charitable status are available to an organisation that is a "charity" in law:

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4.1.1 availability of the charity's funds and the right to receive them may include corporation tax, VAT, and donations.

4.1.2 donors will generally be liable to inheritance tax on legacies to a charity.

4.1.3 business rates

4.1.4 access to funding from the public, including standing of the organisation as a charity encourages donations in wills, or grant funding. (Some grant fund charities, or they decide that they will not accept such support.

4.1.5 public recognition

5. The different types of structure available to a charity

5.1 If you have made a decision to set up a new charity, you will then need to decide on the legal structure to set it up. Any of the following structures can be used:

5.1.1 charitable company limited by guarantee

5.1.2 charitable company limited by shares (a "foundation" or "association" model) (a "foundation" or "association" model) (below)

5.1.3 charitable unincorporated association

5.1.4 charitable trust

5.2 The first two of the above structures are corporate entities, and using such a corporate structure gives the charity's trustees with a degree of legal protection from personal liability to third parties. Unincorporated entities do not provide this protection.

5.3 We suggest that you look at our [Charity Constitution Document Templates](#) subfolder. It refers to the above different types of legal structure for a charity, and it can help you decide which type of legal structure is most appropriate for your needs. That subfolder contains templates for charities using those various different structures.

5.4 As to CIOs in particular, if your charity will be small, it will be its only members, the "foundation" model. If, however, the charity is or will become larger and have other membership (including voting membership), the "association" model is the appropriate form. The [Charity Constitution Document Templates](#) which you can find [here](#) contains templates for both types of CIO.

5.5 That subfolder also contains a [Note: Charitable Incorporated Organisation \(CIO\)](#). We suggest that you read that Note. It only the use of CIOs as a legal structure for a charity should be considered initially when you decide on the legal structure to set up your charity.

6. Trustees

6.1 No matter which legal structure you choose for your new charity, it will need to have trustees. The charity will usually be the first charity to have trustees. The number of trustees will depend on the legal structure that is adopted by the charity, and circumstances of the charity.

6.2 Even though charity trustees are not paid for their work or time, the position of trustee carries with it significant legal duties

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As a consequence, if you approach a charity trustee, they might have the reason why you might decide not to achieve your aims in some other way. If you read the introduction to our [responsibilities and liabilities](#) as well as you can see [here](#).

- 7, the individuals intending to serve themselves with those areas of law that result, it is felt that the burden would be a burdensome means of achieving those prospective first trustees might by charity at all.

usually form the organisation initially steers. The members have limited mechanism for them to change the will be able to decide whether to wind responsible for or involved in managing s.

might initially be able to carry out all it is not a small organisation at the trustees will need assistance with

or more paid staff either from the
d to ensure that they engage and
manner and the trustees will also
nd other relevant areas of law.

liant on the services of volunteers.
not they also have any paid staff.

- Charity volunteers can be dealt with as not paid staff. However, there are also some who should also be engaged and treated as staff in our **Guidance Note: Charity**. It explains that every charity should deal with its volunteers, however few, on the basis of such agreements for a number of years to enable the charity to prove, if challenged, that they are not employees. That Guidance Note also sets out the legal obligations and duties that are applicable to volunteers.

capital cannot be raised from any
 now from individuals or others. If loan

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funding is not available, you should consider the level of funding you need initially and on an ongoing basis. You could research what if any funding is available from public bodies or from the public or from other sources. You could also consider whether it would be practicable to carry out any particular one-off initiatives or events that you have in mind.

a charity's needs, it will have to consider what it will need in order to operate. When you set up your charity, you could consider what you might expect to receive to you from government and other sources, whether funds can be raised from the public or from other sources. You could also consider whether it would be practicable to carry out any particular one-off initiatives or events that you have in mind.

10. Burden of administering a charity under general law

Dealing with both charity law and the general law

10.1 The areas of law and regulation that a charity and its trustees will vary from case to case, but the following (in particular order) lists those areas of law and regulation that may have a significant impact on a charity and its trustees:

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10.1.1 Charity law and regulation

10.1.2 Company law

10.1.3 Risk Management (including investment, money laundering, etc.)

Dealing with both charity law and the general law. The areas of law and regulation that a charity and its trustees will vary from case to case, but the following (in particular order) lists those areas of law and regulation that may have a significant impact on a charity and its trustees:

10.1.4 Conflicts of interest

10.1.5 Tax and VAT

10.1.6 Regulation (including gaming, gambling, appeals for funds, etc.)

Dealing with both charity law and the general law. The areas of law and regulation that a charity and its trustees will vary from case to case, but the following (in particular order) lists those areas of law and regulation that may have a significant impact on a charity and its trustees:

10.1.7 Employment law

10.1.8 Pensions

10.1.9 Equality

10.1.10 Data protection

10.1.11 Buying goods

10.1.12 Selling goods

10.1.13 Retail shop

10.1.14 Consumer law

10.1.15 Website sale

10.1.16 Website registration

10.1.17 Contracts

10.1.18 Making/receiving donations

10.1.19 Borrowing/financing

10.1.20 Health & safety

10.1.21 Safeguarding (including children and adults)

Dealing with both charity law and the general law. The areas of law and regulation that a charity and its trustees will vary from case to case, but the following (in particular order) lists those areas of law and regulation that may have a significant impact on a charity and its trustees:

10.1.22 Insurance

10.1.23 Intellectual property (including database rights, trademarks, etc.)

Dealing with both charity law and the general law. The areas of law and regulation that a charity and its trustees will vary from case to case, but the following (in particular order) lists those areas of law and regulation that may have a significant impact on a charity and its trustees:

10.1.24 Licensing

- 10.1.25 Advertising
- 10.1.26 Acquiring/di
- 10.1.27 Planning law
- 10.2 Some of those areas of law and business forms which you will need to know might also find it helpful to look through the Non-Profit Documents group. You can also find other parts of the Corporate folder
- 10.3 Before you set up a charity, you should consider and take advice on which areas of law and regulation you need to comply with the relevant
11. **Startup tips**
- 11.1 Setting up and running a charity involve considering and dealing with some of the same legal issues that arise when setting up a small business. You might want to look through the issues covered in [Business Start Up](#) section which you can see [here](#) before setting up a new charity.
- 11.2 There might also be specific business or financial issues specific to charities that you need to be aware of before you take any other steps.
12. **Other matters to think about when setting up a charity**
- 12.1 Other matters could be important in terms of their practical impact on the success of your charity. For example, do you have personal experience of running a charity or working with an existing charity for a while so that you have a good understanding of what is entailed: the type of venture, and issues arise in starting a charity is a different type of organisation. If you are starting a charity, will you have adequate spare time to devote to the charity? Are you aware that, as a trustee, you cannot treat the charity as "your charity" and make decisions alone; decisions have to be made by all trustees and carried out adequately and relevantly. Do you have useful and helpful contacts who could help you?
13. **Checks before you set up a charity**
- 13.1 Before you to set up a charity, you should first:
- 13.1.1 be clear that the charity is a charity rather than some other type of organisation
- 13.1.2 ensure that the charity has the features that qualify it as a charity in law
- 13.1.3 choose trustees who are eligible to be trustees, and check that they are not disqualified from appointment as a trustee. We recommend that you have at least three trustees at all times.
- 13.1.4 decide on the name of the charity
- 13.1.5 choose a name that is not already in use and check that the name you propose is not already in use and are legal restrictions on names
- 13.1.6 decide on any other purposes

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13.1.7 create the constitution (i.e. constitution) – you might wish to use a template or to adapt it.

13.1.8 ensure that the charity meets the public benefit requirement

14. **What does it cost to set up a charity?**

14.1 There is no fee to register a charity with the Charity Commission, whatever the legal form of the charity. If you register in the form of a charitable company, you will need to register it at Companies House, and a small fee will be payable.

14.2 You might need to pay some professional fees (e.g. solicitor, accountant) but some professional fees are at a reduced rate to charities or might even do some work or provide advice on a pro bono basis (i.e. without charge). If you have trustees and/or volunteers, and the charity does not need to pay for other startup costs might only be nominal.

15. **How to register a new charity**

15.1 Registration not applicable

15.1.1 If your new charity's annual income is more than £5,000 per year and you are not registered in the legal form of a Charitable Incorporated Organisation, you will need to register it with the Charity Commission. If you register in the still form and run your organisation as a charity, it will still be a charity in law although you will not be registered with the Charity Commission. You might want to consider a simple constitution. See [Unincorporated Charities](#) for more information. You can find [here](#).

15.2 Registration required

15.2.1 If, however, your charity's annual income is more than £5,000 per year, or, irrespective of its form, its annual income is more than £5,000 per year, you must register it with the Charity Commission.

15.2.2 To register your charity, you need to go to the relevant Charity Commission website page. You will then need to input your email address and create a password so that you can access the Commission's online charity register.

15.2.3 You might also need to register your charity with HM Revenue & Customs so that you can claim tax relief. To do so, go to its website which you can find [here](#).

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